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QUESTION PRESENTED

Whether the imposition of a sanction mandated under Rule 11 of the Federal Rules of Civil Procedure may be sustained as an exercise of a district court's inherent or congressionally delegated authority over collateral matters, despite a subsequent determination by the court of appeals that the district court lacked subject matter jurisdiction over the underlying case.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

No. 90-1150

DONALD J. WILLY,

Petitioner,

v.

THE COASTAL CORPORATION, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF OF RESPONDENTS

STATEMENT

Petitioner Donald J. Willy ("Willy") was employed as an in-house attorney by the Coastal States Management Corporation, a subsidiary of respondent, The Coastal Corporation ("Coastal").[1] In 1984, Willy's employment was terminated, prompting Willy to institute a federal administrative proceeding against Coastal under the "whistleblower" provisions of various federal environmental statutes. See *In re Willy*, 831 F.2d 545 (5th Cir. 1987). Willy also filed a lawsuit against Coastal and

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[1] The other defendants (respondents herein) are Coastal States Management Corporation, James R. Paul, George L. Brundrett, Charles F. Jones, William L. Dunker and E.C. (Bud) Simpson. The various respondents will be referred to, collectively, as "Coastal."

the other respondents in state court in Texas, alleging that he was wrongfully discharged.

Because Willy's "wrongful discharge" complaint contained apparent allegations that Coastal had violated various federal statutes, Coastal, in good faith (Pet. App. A52), removed the action to the United States District Court for the Southern District of Texas on the basis of federal question jurisdiction.[2] Willy promptly filed a motion to remand the matter to state court. That motion was denied by the district court in April 1986. See Pet. Br. 3. Following denial of the motion to remand, the parties filed motions addressing the merits of the case. Coastal filed a motion to dismiss the complaint, and Willy responded with, *inter alia*, a motion for partial summary judgment. See Pet. Br. 4.

The district court, in an order dated November 12, 1986, granted Coastal's motion to dismiss. Pet. App. A1. At the same time, the court addressed Coastal's motion for Rule 11 sanctions against Willy and his counsel. *Id.* at A6-A8. The district court found that "Plaintiff, an attorney himself, and his counsel" used their various filings before the court "to create a blur of absolute confusion." *Id.* at A7. The court noted, for example, that in response to the court's permission to file "appropriate and competent summary judgment evidence," Willy and his attorney filed

> a 1,200 page, unindexed, unnumbered, foot-high pile of material which this Court is unable, after examination, to fathom and which is determined to be a conscious and wanton affront to the judicial process, this Court and opposing counsel.

Pet. App. A7; see also *id.* (filings on summary judgment motion were "irresponsible at a minimum and at worst intentionally harassing").

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[2] See appendix in the court of appeals, vol. 7, pp. 1096-98, 1100-05.

Moreover, the court found that Willy's "transgressions" of Rule 11 were not limited to that summary judgment filing. The court noted that Willy based an argument in response to the motion to dismiss on a nonexistent provision of the Federal Rules of Evidence—"an example of Plaintiff's and Plaintiff's counsel's careless pleading and a strong indication of intentional harassment." Pet. App. A8. In sum, the district court concluded that it had "spent enough time on this case to be sorely concerned with the actions of the Plaintiff and Plaintiff's counsel. The conduct of this suit has been inexcusable . . . ." *Id.* Rule 11 sanctions, in the amount of $22,625, were assessed against Willy and his counsel, jointly and severally, to discipline them and to compensate Coastal for the costs of responding to "improper pleadings."

The court of appeals reversed the judgment dismissing Willy's complaint on the ground that the district court lacked subject matter jurisdiction. *Willy* v. *Coastal Corp.*, 855 F.2d 1160 (5th Cir. 1988) ("*Willy I*"); Pet. App. A9-A40. The court of appeals, however, rejected Willy's argument that the "sanctions were inappropriate and that the amount of the sanction was excessive." *Id.* at A35.

The court of appeals held, at the outset, that "we and the district court retain jurisdiction over the Rule 11 aspect of this case . . . ." Pet. App. A35. In response to Willy's argument that sanctions should not have been imposed, the court held that filing "mountainous piles of unorganized documents and citing to nonexistent rules of law are precisely the sort of conduct" that fails to meet the objective standards of Rule 11 and that reflects an intent to "harass or delay." *Id.* at 36. Indeed, the court of appeals noted that the district court's "list of [Willy's] conduct that violated Rule 11 was not meant to be comprehensive" and that Coastal had identified other violations of the Rule by Willy. *Id.* In sum, the court concluded that "the district court clearly did not abuse its discretion in determining that Willy had violated Rule 11." *Id.*

The court of appeals also found "the type of sanction" imposed under Rule 11—a joint and several award of attorneys' fees—was "appropriate." *Id.* The court concluded, however, that the district court had not adequately explained its findings with respect to the "amount of and basis for" the monetary sanction at issue. *Id.*; see also *id.* (district court should explain whether award of attorneys' fees as Rule 11 sanction "satisfied the requirements that the fees must have been reasonably incurred *as a result of* a violation of Rule 11 and in light of the duty to mitigate") (emphasis in original). Accordingly, the "sanctions order" was "remanded to the district court for further proceedings consistent with" the Fifth Circuit's *en banc* decision in *Thomas* v. *Capital Sec. Servs., Inc.*, 836 F.2d 866 (5th Cir. 1988). Pet. App. A38.

On remand, the district court reiterated its catalogue of the "improper conduct" by Willy and his attorney that formed the basis of its original sanctions order, including:

> citation of a nonexistent rule of evidence, Plaintiff's filing of confusing and misleading pleadings, his misleading misquotation of an applicable disciplinary rule, and, most notably, his filing of a 120-page Motion for Summary Judgment that was accompanied by some 1200 pages of unnumbered, unindexed, and largely irrelevant documents . . . .

Pet. App. A41. The court also enumerated additional sanctionable conduct on the part of Willy and his counsel, including:

> a. Plaintiff reinserted in a subsequent pleading allegations which had been previously stricken by the Court . . .;
>
> b. Plaintiff filed responses to Defendants' Motion to Dismiss which where confusing, misleading, and not reasonably based on law or fact;
>
> c. Plaintiff, without reasonable basis in law or fact, asserted in a response to Defendants' Motion to Dismiss that Defendants' counsel . . . was engaged in an improper conflict of interest;
>
> d. in a pleading, Plaintiff misquoted [a disciplinary rule] of the Texas Code of Professional Responsibility, and then proceeded in that pleading to discuss the Disciplinary Rule as though the language he had omitted did not exist . . . .

Pet. App. A43-A44.[3]

In sum, the district court found that Coastal had expended "at least" $19,307 in attorneys' fees "as a direct and proximate result of the Rule 11 violations" listed by the court. Pet. App. A46. Because Coastal had "acted reasonably in attempting to mitigate expenses as a result of the Rule 11 violations," the court entered an order awarding Coastal $19,307 "for the attorneys' fees incurred in responding to" Willy's Rule 11 violations. *Id.* at A46-A47.[4]

The Fifth Circuit affirmed. *Willy* v. *Coastal Corp.*, 915 F.2d 965 (5th Cir. 1990); Pet. App. A48-A56. With respect to the issue on remand—the need for further explanation of the "amount of and basis for" the sanction —the court found "no abuse of discretion in the amount of sanction imposed against Willy and his attorney." Pet.

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[3] The court specifically noted more than 10 separate instances in which "Plaintiff and his counsel had sufficient and repeated notice that they were acting in violation of Rule 11." Pet. App. A44.

[4] Although not necessary to support the order of Rule 11 sanctions, the district court took note of the fact that Willy, "in an effort to harass Defendants in the instant proceeding," had filed a separate lawsuit, in federal court, against Coastal and 80 of its subsidiaries, directors, officers, employees and counsel, alleging violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*, based on the Defendants' conduct of this litigation. Pet. App. A44. Together with Willy's threat, during a transcribed conference in the case, to "depose no less than 60 individuals in connection with this matter," this misconduct provided further evidence of Willy's "intent to harass" defendants in connection with the litigation of his claim. *Id.*

App. A55. Thus, the court rejected Willy's argument that the sanction was "excessive and unreasonable." *Id.* at A48.

The court of appeals rejected Willy's alternative argument that "because the district court lacked subject matter jurisdiction over the merits of his claim, it was similarly without jurisdiction to impose Rule 11 sanctions." *Id.* at A50. The court reasoned that the holding in *Cooter & Gell* v. *Hartmarx Corp.*, 110 S. Ct 2447 (1990), that enforcement of Rule 11 involved a "collateral issue" and not a "judgment on the merits of an action," *id.* at 2456, supported the Fifth Circuit's previous conclusion that "Rule 11 sanctions w[ere] available even when the district court . . . was without subject matter jurisdiction." Pet. App. A51.

Willy argued that imposition of sanctions was particularly inappropriate because he and his attorney consistently had resisted—not invoked—federal jurisdiction. *Id.* at A52. The court of appeals, however, found that

> Willy and his attorney were sanctioned for objectionable conduct which was independent of the jurisdictional posture in the case. Willy was entitled to contest removal jurisdiction . . . [but] this right did not include the authority to file misleading or incomprehensible pleadings, to use the discovery process for harassment, or to level frivolous allegations of conflicts of interest.

Id. The court also rejected Willy's argument that "if Coastal had not removed the case, Willy would not have had to file the offending pleadings." *Id.* at n.7 ("there was at least a colorable basis upon which Coastal could have sought removal" and "[w]e refuse to find that Coastal's good faith efforts 'caused' Willy and his attorney to engage in sanctionable conduct"). In sum, the court "reaffirm[ed] [its] conclusion in *Willy I* [855 F.2d 1160 (5th Cir. 1988)] that the district court had jurisdiction to impose Rule 11 sanctions upon Willy and his attorney." Pet. App. A54.

SUMMARY OF ARGUMENT

Rule 11 of the Federal Rules of Civil Procedure, by its plain terms, applies not just to filings in cases in which the district court has correctly asserted subject matter jurisdiction, but extends to "[e]very" paper filed in federal court. Fed. R. Civ. P. 11. Furthermore, Rule 1 states that the rules govern "in all suits of a civil nature," and Rule 81(c) states that the rules specifically "apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal." Fed. R. Civ. P. 1, 81(c); see also 28 U.S.C. § 2072. The plain language of these rules establishes that Rule 11 applies to the procedural misconduct for which sanctions were imposed here. The only question presented here is whether Article III of the Constitution deprives district courts of authority to impose sanctions for litigation misconduct if it is later determined that the court lacked subject matter jurisdiction over the underlying case.

Article III imposes no such limit. The Constitution limits the federal courts in the exercise of their judicial power to the categories of cases or controversies listed in Article III. But there are two other constitutional sources of judicial authority, long recognized by this Court, that each independently supports the sanctions ordered here.

First, federal district courts have inherent authority to sanction attorneys and parties whose litigation misconduct violates the standards of professional responsibility embodied in rules such as Rule 11. This authority is intrinsic to any "Court" as that term is used in Article III and, accordingly, is vested in the federal courts contemporaneously with Congress's exercise of its constitutional authority to "ordain and establish" "such inferior Courts." U.S. Const. art. III, § 1. Such inherent authority is independent of the grant of subject matter jurisdiction to the federal courts. *Young* v. *United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787 (1987); *Michael-*

son v. *United States ex rel. Chicago, St. P., M. & O. Ry.*, 266 U.S. 42, 65-66 (1924); *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324, 327 (1904).

Although the inherent power of the federal courts is neither unlimited nor to be drawn on imprudently, it properly may be invoked by the courts to manage proceedings before them, to vindicate their authority and to take additional actions necessary to the exercise of all other powers. *Chambers* v. *Nasco, Inc.*, 111 S. Ct. 2123, 2133 (1991); *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 764 (1980); *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812). Like the power to hold litigants in criminal contempt, the courts' inherent power to enter sanctions in this case is necessary to vindicate its authority. The power to impose these sanctions is also a necessary corollary of a courts' inherent power to determine its own jurisdiction.

Second, federal district courts have authority delegated to them by Congress to enforce procedural rules as necessary to ensure the orderly management of the judicial process. *Hanna* v. *Plumer*, 380 U.S. 460, 472 (1965). By virtue of Congress's power under Article III to establish inferior courts and its power under Article I to make all laws necessary and proper to the execution of its other express powers, Congress may grant and has granted the courts authority to take a variety of actions not predicated on the existence of subject matter jurisdiction. *Cf. Mistretta* v. *United States*, 488 U.S. 361, 389 & n.16 (1989). The only restriction on Congress's power to delegate authority to the Judiciary is the requirement embodied in the principle of separation of powers that the federal courts not be allowed to exercise authority that is more appropriately exercised by a different branch of government. The Rule 11 sanctions ordered here do not transgress that limit.

In particular, Congress has granted this Court authority to promulgate and enforce procedural rules neces-

sary to the operation of the courts. *Hanna*, 380 U.S. at 471; *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 15-16 (1941). By virtue of its delegation of authority to promulgate the Federal Rules of Civil Procedure and its subsequent approval of those Rules as provided by the Rules Enabling Act, 28 U.S.C. § 2071 *et seq.*, Congress has granted the district courts authority to levy Rule 11 sanctions in all cases pending before them, without regard to the eventual determination on appeal concerning subject matter jurisdiction. This grant of power reflects the courts' need for authority to enforce procedural rules in all civil actions pending before them, regardless of the ultimate disposition of the question of subject matter jurisdiction, as well as the fact that the courts are best suited to implement and enforce procedural rules.

Accordingly, there is no constitutional impediment to the enforcement of the sanctions ordered here. Nor is there any reason why this Court, in the exercise of its supervisory authority, should restrict the authority of the district courts to impose sanctions in these circumstances. The power to order sanctions for harassment or other inappropriate litigation tactics is necessary to vindicate the authority and legitimacy of the court and to deter future misconduct. Such sanctions do not encroach on the authority of either of the coordinate branches, nor do they trench on the legitimate concerns of the States. Like the Executive and Legislative Branches, the States have no interest in seeing those who have violated procedural rules governing conduct in the federal courts gain a reprieve from appropriate sanctions.

ARGUMENT

THE DISTRICT COURT RETAINED BOTH INHERENT AND CONGRESSIONALLY DELEGATED AUTHORITY TO ENFORCE RULE 11 SANCTIONS AGAINST PETITIONER FOR LITIGATION ABUSES, DESPITE THE SUBSEQUENT DETERMINATION THAT THE COURT LACKED SUBJECT MATTER JURISDICTION IN THIS CASE.

Petitioner's argument, at its core, is that, unless a district court either has subject matter jurisdiction over an underlying case or controversy under Article III or is in the process of determining jurisdiction, the court lacks all constitutional authority to impose attorneys' fees as a sanction under Rule 11 for serious litigation abuses. This Court has long recognized, however, that there are two constitutional sources of judicial authority in addition to subject matter jurisdiction over cases and controversies: (1) the authority of the federal courts to manage proceedings before them that inheres in the very existence of "Courts" as an institution identified in Article III, and (2) the authority vested in the federal courts by Congress pursuant to its power under Article I to make laws "necessary and proper" to the administration of justice. These sources of judicial authority independently provide the district court with power to respond to a full range of litigation abuses, including sanctioning petitioner for filing "inexcusable," "irresponsible" and "intentionally harassing" pleadings. See Pet. App. A7-A8. The sanctions ordered here are fully consistent with the powers inherent in the federal courts under Article III and granted by Congress through Article I, and the power to issue such sanctions is essential to maintaining the integrity of those courts.

A. Rule 11 Plainly Applies To All Civil Actions In The United States District Courts, Whether Or Not The District Court Has Subject Matter Jurisdiction Over The Action.

Rule 11 of the Federal Rules of Civil Procedure requires that "[*e*]*very* pleading, motion, and other paper"

filed in federal court must be signed by at least one attorney of record. Fed. R. Civ. P. 11 (emphasis added). Under Rule 11, the attorney's signature

> constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Id. Rule 11 further provides that, upon discovery of a violation of the Rule, a district court "shall impose . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing . . . ." *Id.* As this Court has observed, the plain meaning of Rule 11 is clear: it requires an appropriate sanction for pleadings filed in violation of its terms. *Business Guides, Inc.* v. *Chromatic Communication Enters., Inc.*, 111 S. Ct. 922, 928 (1991).

Rule 11 is designed to vindicate the integrity and dignity of the district court, *Cooter & Gell* v. *Hartmarx Corp.*, 110 S. Ct. 2447, 2454-56 (1990), and "[t]here is little doubt that Rule 11 is reasonably necessary to maintain the integrity of the system of federal practice and procedure . . . ." *Business Guides*, 111 S. Ct. at 934. "[T]he imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." *Cooter & Gell*, 110 S. Ct. at 2455-56 (Rule 11 sanction is a collateral order that may be issued "after an action is no longer pending").

Nothing in the plain language of the Rules Enabling Act and the Federal Rules of Civil Procedure limits the

application of Rule 11 to cases in which the district court has subject matter jurisdiction. The Rules Enabling Act confers upon the Supreme Court the power without limitation "to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts. . . ." 28 U.S.C. § 2072.[5] The Rules themselves expressly govern procedure "in all suits of a civil nature" unless specifically excepted, Fed. R. Civ. P. 1, and specifically "apply to all civil actions removed to the United States district courts from the state courts and govern procedure after removal." Fed. R. Civ. P. 81(c). Moreover, the mandatory phrasing of the sanctions provision of Rule 11 underscores the intention of the drafters to reach *all* instances of bad-faith pleading. Fed. R. Civ. P. 11; see *Cooter & Gell*, 110 S. Ct. at 2455. Barring constitutional impediment, the plain language of the Rules is dispositive. See *id.* at 2453; *Business Guides*, 111 S. Ct. at 928; *Pavelic & LeFlore* v. *Marvel Entertainment Group*, 110 S. Ct. 456, 458 (1989).

Petitioner argues that, despite the fact that Rule 11 plainly is applicable on its face, the imposition of Rule 11 sanctions against him was unconstitutional because the conduct for which petitioner was sanctioned occurred in connection with briefing the merits of a case that the district court was ultimately found not to have jurisdiction to hear. To the contrary, the federal courts' inherent and statutory authority to regulate matters of practice and procedure—which is independent of their Article III judicial power to decide cases or controversies—fully supports the affirmance by the court below of the sanctions against petitioner in the circumstances of this case.

---

[5] Although phrased differently, Section 2072 as it existed before 1988 conferred similarly broad authority in all relevant respects, including the authority to prescribe rules of practice and procedure "in civil actions."

B. The Inherent Power Of Federal Courts To Issue Sanctions For Abuse Of The Judicial Process Provides Independent Authority For The Imposition Of A Sanction Under Rule 11, Regardless Of The Court's Subject Matter Jurisdiction Over The Merits Of The Underlying Dispute.

In addition to their "judicial power" to decide cases and controversies under Article III, federal courts have inherent authority to manage proceedings before them and to engage in a range of activities consistent with their role as courts. Because Rule 11 implements a court's inherent authority "to police itself," *Chambers* v. *Nasco, Inc.*, 111 S. Ct. 2123, 2133 (1991), courts have power to impose sanctions under Rule 11 even when they lack jurisdiction over the merits of the case.

1. Article III establishes the judicial branch and defines the subject matter jurisdiction of the federal courts. Section 1 of Article III vests the "judicial Power of the United States" in "one supreme Court" and such "inferior Courts" as Congress may "ordain and establish." U.S. Const. art. III, § 1. Section 2 states that the judicial power "shall extend to" certain specified categories of cases or controversies. *Id.* at § 2. This Court has held that the judicial power is limited to those classes of cases identified in Section 2. *E.g.*, *Muskrat* v. *United States*, 219 U.S. 346, 356 (1911). Nevertheless, this Court also has recognized that although Article III delimits the scope of the "judicial power" granted to the federal courts, those courts also possess those powers that are inherent in any "Court" as that term is used in Article III, and that those powers arise by virtue of the creation of those "inferior Courts" by Congress.

It has long been settled that federal courts possess inherent authority to take such action as may be necessary to manage proceedings before them and to vindicate their authority. In *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32 (1812), this Court recognized that, in addition to the

judicial power over the subject matter listed in Article III, federal courts possess "inherent authority" that "must necessarily result to our courts of justice, from the nature of their institution"; such powers exist, the Court explained, because they are "necessary to the exercise of all others." *Id.* at 34; see *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 764 (1980) (quoting *Hudson*).

The federal courts possess inherent authority to regulate the "mode of proceeding and process" for litigants that appear before them. *Steamer St. Lawrence*, 66 U.S. (1 Black) 522, 526 (1861) (admiralty); see also *Palermo* v. *United States*, 360 U.S. 343, 345 (1959) (criminal); *Harris* v. *Nelson*, 394 U.S. 286, 299 (1968) (habeas corpus). In some circumstances, that inherent authority may be limited by congressional enactment of procedural rules, *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874), but such inherent power clearly exists and may be exercised (absent expressed congressional intent to the contrary) "even if procedural rules exist which sanction the same conduct." *Chambers*, 111 S. Ct. at 2135. Thus, in *Chambers*, the Court upheld a district court's exercise of its inherent power to impose sanctions even though the court "could have employed Rule 11." *Id.* at 2136. Similarly, in *Link* v. *Wabash R.R.*, 370 U.S. 626 (1962), the Court held that a federal court had " 'inherent power' " to dismiss a case *sua sponte* for lack of prosecution. *Id.* at 630. The Court noted that Fed. R. Civ. P. 41(b) provides for involuntary dismissal upon the defendant's motion, but held that Rule 41(b) did not abrogate the courts' inherent power to take such action. *Id.* at 630-31. Such authority is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.*; see *Michaelson* v. *United States ex rel. Chicago, St. P., M. & O. Ry.*, 266 U.S. 42, 66 (1924) (Congress may regulate, but not abrogate, the federal courts' inherent powers).

A federal court's inherent powers arise *independently* of subject matter jurisdiction, and vest with the court at the time it is "establish[ed]" as a "Court." U.S. Const. art. III, § 1. This Court has made this plain with regard to the courts' contempt power, which is the "most prominent" of their inherent powers. *Roadway Express*, 447 U.S. at 764.[6] As the Court has repeatedly explained:

> That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled law. It is essential to the administration of justice. The courts of the United States, *when called into existence and vested with jurisdiction over any subject*, at once become possessed of the power.

Young v. *United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787, 795 (1987) (quoting *Michaelson*, 266 U.S. at 65-66) (emphasis added); see also *Ex Parte Robinson*, 86 U.S. (19 Wall.) at 510 ("The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this [contempt] power"); *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324, 327 (1904) (same).[7] Thus, for ex-

[6] "[I]t is firmly established" that the power to enforce all judicial orders by means of the contempt power " 'is inherent in all courts.' " *Chambers* v. *Nasco, Inc.*, 111 S. Ct. 2123, 2132 (1991) (quoting *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874)); see *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 324, 326 (1904) ("The power to punish for contempt is inherent in all courts").

[7] This same reasoning supported the Court's holding in *Anderson* v. *Dunn*, 19 U.S. (6 Wheat.) 204 (1821), that Congress has the power to punish those who act in contempt of congressional proceedings. The foundation of the Court's decision was the fact that federal courts are "universally acknowledged to be vested, *by their very creation*, with power to impose silence, respect, and decorum in their presence, and submission to their lawful mandates, and as a corollary to this proposition, to preserve themselves and their officers from the approach and insults of pollution." *Id.* at 227-28 (emphasis added). The Court then reasoned that the legislative branch, no less than the judiciary, must have the power

ample, the inherent contempt power may be exercised in relation to an administrative or other function entirely separate from the resolution of cases or controversies.[8] Similarly, courts have power to levy sanctions for criminal contempt even if they lack jurisdiction over the subject matter of the underlying lawsuit. *United States* v. *United Mine Workers*, 330 U.S. 258, 293-95 (1947); see *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418, 450-52 (1911) (settlement of main case does not affect independent proceeding for criminal contempt arising out of that case); Pet. Br. 25.[9]

Because the inherent powers of a federal court come into being concurrently with its establishment, the exist-

"to guard itself from contempts" if it is to function effectively. *Id.* at 228. See also *United States* v. *Hudson*, 11 U.S. (7 Cranch) 32, 33 (1812) ("any political body [has] an implied power to preserve its own existence and promote the end and object of its creation").

[8] See, *e.g.*, *In re Rumaker*, 646 F.2d 870 (5th Cir. 1980) (examiner held in contempt for failure to appear at naturalization hearing); Pet. Br. 25-26.

[9] Of course, the courts' inherent powers are most frequently exercised in the course of deciding cases and controversies within their jurisdiction. For example, inherent power provides authority to vacate a judgment obtained through fraud, *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.*, 322 U.S. 238 (1944), to dismiss an action on the ground of *forum non conveniens*, *Chambers*, 111 S. Ct. at 2132 (citing *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, 507-08 (1947)), or to dismiss an action for failure to prosecute. *Link* v. *Wabash R.R.*, 370 U.S. 626, 630-31 (1962). Federal courts also may use their inherent power to assess attorneys' fees against a party who has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers*, 111 S. Ct. at 2133 (quotations omitted); see *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 766 (1980); *Hutto* v. *Finney*, 437 U.S. 678, 689 n.14 (1978) (inherent power to impose attorneys' fees for "delaying or disrupting the litigation or hampering enforcement of a court order"). But the source of the court's power to take such actions lies ultimately not in its "judicial power" to decide cases and controversies but in the power inherent in its establishment as an Article III "Court."

ence of subject matter jurisdiction over any particular case is not a constitutional prerequisite to the court's exercise of inherent powers.[10] The imposition of sanctions, for example, "transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of vindicat[ing] judicial authority . . . and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy." *Chambers*, 111 S. Ct. at 2133 (quotations omitted). Similarly, a federal court has inherent authority to control admission to its bar and to suspend, disbar or otherwise impose sanctions on attorneys who appear before it, regardless of whether an Article III case or controversy involving that attorney is pending before the court at that time. *Ex parte Robinson*, 86 U.S. (19 Wall.) at 512; *Roadway Express*, 447 U.S. at 766-67; see Pet. Br. 34. The inherent power also extends to the regulation of conduct that occurs within the courtroom, so that a federal court has authority to expel a disruptive criminal defendant, *Illinois* v. *Allen*, 397 U.S. 337 (1970), or to adopt "[p]rocedural rules governing court administration." Pet. Br. 28 n.29 (conceding authority to enforce rules, "for example, barring television cameras or recording devices in federal courtrooms").

Finally, federal courts possess inherent power to determine whether they have jurisdiction in particular cases. Although not explicitly referenced in Article III, the federal courts' inherent power to determine jurisdiction is well established as a basis for asserting jurisdiction over complaints filed in or removed to federal court and for

[10] This Court pursuant to its supervisory authority can limit the discretion of the lower federal courts in the exercise of their inherent powers. See, *e.g.*, *Young* v. *United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787, 802-09 (1987) (exercising supervisory authority to limit inherent power to appoint private attorneys to prosecute contempts). As discussed in Part D, *infra*, there is no need for the Court to limit the discretion of the lower courts in cases like this one, and many reasons not to do so.

issuing all orders necessary to the resolution of jurisdictional questions. *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 78-79 (1988); *United Mine Workers*, 330 U.S. at 291-92; 13A C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3536 (1984).[11] Indeed, as discussed *infra*, pages 24-26, a court's inherent power to determine whether it has jurisdiction provides sufficient authority to sustain a judgment on the merits, entered subsequent to an erroneous determination of judisdiction, from collateral attack. *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938). The federal courts' jurisdiction to determine jurisdiction dramatically illustrates the existence of and need for the courts' inherent power—apart from Article III—to take actions "necessary to the exercise of all others." *Hudson*, 11 U.S. (7 Cranch) at 34.

2. The power of the federal courts to order sanctions when litigants violate Rule 11 rests ultimately on their inherent power. Given the federal courts' inherent power to regulate the "mode of proceeding and process" in matters before them, *Steamer St. Lawrence*, 66 U.S. (1 Black) at 526, federal courts are not dependent on congressional authorization for the promulgation and employment of procedural rules. Even if Congress had not expressly authorized the federal courts to impose sanctions in circumstances such as this case (although, in fact,

[11] A determination of the existence of subject matter jurisdiction may involve extended proceedings before the district court, and, accordingly, the court's inherent authority includes the power to exercise procedural control over the case while reaching the jurisdictional determination. See *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79 (1988) (citing *United States* v. *Shipp*, 203 U.S. 563, 573 (1906)); see also *Bowyer* v. *U.S. Dep't of Air Force*, 875 F.2d 632 (7th Cir. 1989), *cert. denied*, 110 S. Ct. 846 (1990); *Szabo Food Serv., Inc.* v. *Canteen Corp.*, 823 F.2d 1073, 1078 (7th Cir. 1987), *cert. dismissed*, 485 U.S. 901 (1988); *Hatteras of Lauderdale, Inc.* v. *Gemini Lady*, 662 F.Supp. 1525 (S.D. Fla. 1987), *aff'd*, 853 F.2d 848 (11th Cir. 1988).

it has, see Part C, *infra*), the federal courts would retain inherent authority to do so.

For example, in *Michaelson* v. *United States*, when the Court reviewed the constitutionality of a statute that required a jury trial for "specified kinds of contempt," the Court took pains to make clear that although the inherent power of courts to punish for contempt "may be regulated [by Congress] within limits," the "attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative." 266 U.S. at 62, 66. Similarly, when Congress, through the Conformity Act of 1872, ordained that the rules of procedure in federal court should conform "as near as may be" to the rules of court of the state in which it was located, the Supreme Court held that the lower courts retained "the power to reject . . . any subordinate provision in [the] state [procedural] statutes which, in their judgment, would unwisely encumber the administration of the law, or tend to defeat the ends of justice, in their tribunals." *Indianapolis & St. L. R.R.* v. *Horst*, 93 U.S. 291, 300-01 (1876); see also *Shepard* v. *Adams*, 168 U.S. 618 (1898).

It is true, of course, that Congress, which possesses the power to ordain and establish (and thus presumably to abolish) the federal courts, retains plenary control over their subject matter jurisdiction.[12] But the reasoning of *Michaelson* is not inconsistent with the acknowledgment of that power. Article III grants Congress power to establish not just any adjudicatory tribunals but only inferior "Courts"—and once those "courts" are created they necessarily possess inherent power, regardless of their jurisdiction. *Supra*, pages 15-17. This Court's recog-

[12] The Court has long distinguished between the inherent power of courts to regulate judicial procedure and the plenary power of Congress to determine the subject matter jurisdiction of the lower federal courts. *E.g.*, *Venner* v. *Great N. Ry.*, 209 U.S. 24, 35 (1908); *Steamer St. Lawrence*, 66 U.S. (1 Black) 522 (1861).

nition that certain powers are inherent in the nature of a "court" is a recognition that Article III, by its plain terms, prevents Congress from ordaning and establishing adjudicatory tribunals under Article III that do not possess those powers.

Rule 11 simply "build[s] upon and expand[s] the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation." *Chambers*, 111 S. Ct. at 2134-35 (quoting Adv. Comm. Notes on the 1983 Amendment to Rule 11). Rule 11 thus directs the exercise of the federal courts' inherent authority to sanction litigants and their counsel.

3. The district court had authority to sanction petitioner for misconduct that violated Rule 11 under either of two attributes of its inherent power. First, the entry of Rule 11 sanctions was permissible under the court's inherent power to police itself and to sanction parties who abuse the judicial process. Second, the entry of Rule 11 sanctions was permissible as a collateral order founded on the court's inherent power to determine its own jurisdiction.

a. It is undisputed that federal courts have inherent power to protect the integrity of the courts by holding contumacious litigants in criminal contempt. Federal courts also possess the lesser power to impose sanctions short of contempt for abusive conduct that is offensive to the court but does not merit criminal contempt. "[T]his Court [has] recognized the 'well-acknowledged' inherent power of a court to levy sanctions in response to abusive litigation practices." *Roadway Express*, 447 U.S. at 765 (quoting *Link* v. *Wabash R.R.*, 370 U.S. 626, 632 (1962)).

Like the power to impose criminal contempt, the authority exercised pursuant to Rule 11 vindicates the integrity and dignity of the district court. *Cooter & Gell*

v. *Hartmarx Corp.*, 110 S. Ct. 2447, 2454-56 (1990). The issuance of sanctions under "Rule 11 is reasonably necessary to maintain the integrity of the system of federal practice and procedure . . . ." *Business Guides, Inc.* v. *Chromatic Communication Enters., Inc.*, 111 S. Ct. 922, 934 (1991). *Cf. Young*, 481 U.S. at 795-96; *Gompers*, 221 U.S. at 450; *Michaelson*, 266 U.S. at 65-66. It is thus a power "necessary to the exercise of all others." *Hudson*, 11 U.S. (7 Cranch) at 34.

Petitioner largely concedes this point. He states that courts have inherent power to "suspend, disbar, or sanction incompetent or irresponsible lawyers" for conduct that occurs "during [the courts'] mistaken consideration of the merits of cases beyond their subject-matter jurisdiction." Pet. Br. 14; see *id.* at 34 n.33. He argues, however, that any such sanction may not include an award of attorneys' fees because such fees (1) "compensate litigants" who lost on the merits (*id.* at 14, 24) and (2) are tantamount to a judgment "in this case." *Id.* at 17. Petitioner's attempts to distinguish attorneys' fees from other sanctions under Rule 11 have already been rejected by this Court.

First, this Court has repeatedly stated that the purpose of an award of attorneys' fees under Rule 11 is "punitive" rather than compensatory. *Chambers*, 111 S. Ct. at 2137. As the Court explained just last Term in upholding a Rule 11 sanction of "legal expenses and out-of-pocket costs" in *Business Guides*, 111 S. Ct. at 927, "[t]he main objective of the Rule is not to reward parties who are victimized by litigation; it is to deter baseless filings and curb abuses." *Id.* at 934. See also *Cooter & Gell*, 110 S. Ct. at 2454 ("It is now clear that the central purpose of Rule 11 is to deter baseless filings in District Court and . . . streamline the administration and procedure of the federal courts"); *id.* at 2457 (Rule 11 is "aimed at curbing abuses of the judicial system"); *id.* at 2454 (courts must "give effect to the rule's central goal of deterrence"); *id.* at 2460 (same).

Not only has the Court recognized that the central purpose of fee-shifting under Rule 11 is punitive, it has held that the fact that a sanction of attorneys' fees has the effect of compensating one of the parties to the litigation is merely an incidental effect of the Rule. Thus, in *Business Guides*, the Court acknowledged that "[i]mposing monetary sanctions on parties that violate the Rule may confer a benefit on other litigants . . . ." 111 S. Ct. at 934. The Court held, however, that because "Rule 11 is reasonably necessary to maintain the integrity of the system of federal practice and procedure," such benefits constitute nothing more than "incidental effects on substantive rights." *Id.* The Court expressly distinguished the sanction of attorneys' fees under Rule 11 from an award of attorneys' fees under a fee-shifting statute because under Rule 11, the sanction of attorneys' fees (1) is "not mandated," (2) is "not tied to the outcome of litigation," and (3) "shift[s] only the cost of a discrete event." *Id.*

Second, this Court has held that imposition of Rule 11 sanctions—far from being a decision on the merits of the case as petitioner contends—is entirely collateral to the court's substantive decision on the merits:

> [T]he imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate.

Cooter & Gell, 110 S. Ct. at 2456. Indeed, the imposition of a sanction under Rule 11, like the exercise of the criminal contempt power, can involve a " 'separate and independent proceeding' " not a part of the underlying litigation. See *id.* (quoting *Bray* v. *United States*, 423 U.S. 73, 75 (1975)).[13]

[13] The Court noted in *Cooter & Gell* that collateral orders, "[l]ike the imposition of costs, attorney's fees and contempt sanctions," may be issued "after an action is no longer pending." *Cooter & Gell* v. *Hartmarx Corp.*, 110 S. Ct. 2447, 2455-56 (1990). Such orders involve " 'independent proceeding[s] supplemental to the original proceeding.' " *Id.* at 2455 (quoting *Sprague* v. *Ticonic Nat'l Bank*, 307 U.S. 161, 170 (1939)). Of course, most procedural orders entered by a district court, such as those related to scheduling, to discovery disputes, to issues to be raised at trial, and so on, are not collateral; a finding that the district court lacked Article III jurisdiction would necessarily mean that such orders would be vacated as well. Orders for sanctions are different. Because such orders serve to vindicate the authority of the court, and because the violation is complete at the time the sanctionable conduct occurs, district courts retain jurisdiction to effectuate such orders even after the underlying action is dismissed. In this regard, sanctions under Rule 37(b) are no different from sanctions under Rule 11. See, *e.g.*, *Roadway Express*, 447 U.S. at 763-64 (Rule 37(b)); *Cooter & Gell*, 110 S. Ct. at 2455 (the "violation of Rule 11 is complete when the [improper] paper is filed") (citation omitted); see also *United States* v. *United Mine Workers*, 330 U.S. 258, 295 (1947) (court would "affirm the judgments for criminal contempt as validly punishing violations of an order then outstanding and unreversed" even if district court lacked jurisdiction over the merits).

The sanction issued here illustrates the point. Petitioner was sanctioned for his failure to meet obligations owed to the court—for filing papers "determined to be a conscious and wanton affront to the judicial process, the [c]ourt and opposing counsel," and for "careless pleading" that gave a "strong indication of intentional harassment." Pet. App. A7-A8. Petitioner's persistent rhetoric notwithstanding,[14] it is plain on the face of the record that

[14] Even in his brief on the merits, where the question presented assumes that sanctionable conduct took place, petitioner cannot bring himself to admit that he was sanctioned for gross procedural misconduct entirely unrelated to any substantive issue in the case. See Pet. Br. 13 (referring to his "purported improprieties"); *id.* at 35 ("purported misconduct"). Petitioner attempts to paint the sanctions as an "award" designed to "compensate [respondents] for wrongly inflicting a case on the federal courts." *Id.* at 24, 33; see also Pet. Br. 21 (courts should not impose sanctions "against those properly resisting the mistaken exercise of subject-matter jurisdiction"); *Id.* at 24 (there is no "necessity" to award fees "against litigants properly contesting federal subject-matter jurisdiction, in favor of litigants mistakenly invoking it"). The record completely rebuts petitioner's attempt rhetorically to link his arguments on

the sanction was based solely on petitioner's misconduct and was entirely collateral to the merits of the jurisdictional issue and to the substantive claims in petitioner's complaint. In sum, the district court's inherent authority to impose sanctions for abusive conduct fully supports the Rule 11 sanction ordered here, and the particular sanction ordered—payment of attorneys' fees—is consistent with the exercise of that power.

b. There is a second, established basis for the exercise of inherent authority that also supports the sanction ordered here. As discussed *supra*, pages 17-18, district courts have inherent authority to determine whether they have jurisdiction in a particular matter. The district court had authority to order sanctions here because the procedural misconduct in question occurred during a proceeding in which the district court had properly asserted jurisdiction to determine jurisdiction.

Petitioner concedes that courts have inherent power to determine jurisdiction and that district courts do not always need subject matter jurisdiction as defined in Article III to have power to enter sanctions.[15] He argues,

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jurisdiction (which were vindicated on appeal) and his sanctionable behavior before the district court (which was not). The sanctions were imposed solely in response to petitioner's improper pleadings, and had *nothing to do* with the validity of either party's jurisdictional arguments.

[15] Pet. Br. 11-12, 19-20, 22-23. Petitioner concedes that "[e]ven in cases beyond the judicial power conferred by Article III, federal courts historically have exercised an inherent . . . power . . . to punish disruptions of or interference with [their] jurisdictional determinations, and to sanction willful disobedience of court orders designed to enable resolution of subject-matter jurisdictional questions. . . ." *Id.* at 22-23. Petitioner also concedes that this power is a necessary adjunct to the courts' inherent power to determine their own jurisdiction. *Id.* at 22-24. In imposing sanctions under such circumstances, however, a court is entering a binding procedural order in a case over which it may not have subject matter jurisdiction. The court could not have the power to do so if entry of procedural orders were dependent upon the existence of an Article III "case or controversy."

however, that a district court's inherent power to enter binding collateral orders pursuant to its inherent jurisdiction to determine jurisdiction does not extend to orders "unrelated to" that determination and ends on the day that the district court mistakenly asserts that it has subject matter jurisdiction. Pet. Br. 20. He thus argues that the santcions ordered here may not be sustained because his "purported improprieties" (*id.* at 13) occurred after the court mistakenly asserted subject matter jurisdiction and "relate only" to the court's decision on "the merits of [the] controversy." *Id.* at 9.

This Court's decisions establish, however, that the power conferred by the federal courts' jurisdiction to determine jurisdiction is sufficient to support any order entered by a federal court—even a final judgment on the merits. In *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938),[16] the respondent sought to recover in state court on a claim against petitioner as guarantor of a bond. Petitioner interposed a defense of *res judicata*, claiming that a prior decision of a federal district court sitting in bankruptcy had extinguished his obligation. The state court "denied effect to [his] plea of *res judicata*," holding that the district court plainly lacked subject matter jurisdiction to enter the judgment. *Stoll*, 305 U.S. at 167, 171.

This Court reversed. The Court assumed, for purposes of decision, that the district court had indeed lacked subject matter jurisdiction. *Id.* at 171 & n.8. It nevertheless held that the district court's jurisdiction to determine jurisdiction provided the basis for a *binding* decision on the merits of petitioner's obligation, and thus that the defense of *res judicata* was valid. Id. at 172.[17]

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[16] See also *Davis* v. *Davis*, 305 U.S. 32 (1938); *Durfee* v. *Duke*, 375 U.S. 106, 112-15 (1963).

[17] In so holding, the Court observed that "[a]n erroneous affirmative conclusion as to the jurisdiction does not in any proper sense enlarge the jurisdiction of the court until passed upon by the court of last resort, and even then the jurisdiction becomes enlarged only from the necessity of having a judicial determination of the juris-

Stoll thus establishes, contrary to petitioner's argument, that a court's power to enter orders pursuant to its jurisdiction to determine jurisdiction does not end with an erroneous jurisdictional decision. Because a federal court's inherent authority is sufficient to support an order of judgment on the merits, it must be sufficient to support a collateral and "less severe" order, such as an award of attorneys' fees. See *Roadway Express*, 447 U.S. at 765 (greater inherent authority to dismiss for failure to prosecute presupposes authority to enter the less severe sanction of an award of attorneys' fees); *Chambers*, 111 S. Ct. at 2133 (same). Thus, the district court's inherent authority to determine its own jurisdiction provided the necessary power to enter a collateral order of sanctions for petitioner's "inexclusable" and "intentionally harassing" conduct, regardless of whether the court reached the correct result in its determination of the jurisdictional question.

Stoll also indicates that the power conferred by the district court's inherent authority is not narrowly limited to procedural orders issued *in relation to* the determination of subject matter jurisdiction. Indeed, in *Chicot County Drainage Dist.* v. *Baxter State Bank*, 308 U.S. 371 (1940), the Court applied *Stoll* in circumstances where the parties had not contested subject matter jurisdiction in the original suit, and thus where there was no jurisdictional order to which the final order could possibly "relate." *Id.* at 376-78.

In sum, the district court's order sanctioning petitioner under Rule 11 for repeated abuses of the litigation process is supported by the inherent authority of the federal courts. The exercise of that authority is entirely consistent with Article III limitations on the exercise of judicial power, regardless of the courts' subject matter jurisdiction over the underlying case.

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diction over the subject matter." *Stoll* v. *Gottlieb*, 305 U.S. 165, 172 (1938).

C. Congressional Power Delegated Pursuant To The Rules Enabling Act Provides Independent Authority For The Imposition Of A Sanction Under Rule 11, Regardless Of The Court's Subject Matter Jurisdiction Over The Merits Of The Underlying Dispute.

In addition to their inherent authority, federal courts may exercise power pursuant to authority granted to them by Congress. Under Article III, Congress is empowered to "ordain and establish" the lower federal courts. U.S. Const. art. III, § 1. Under Article I, Congress has authority to "make all Laws which shall be necessary and proper for carrying into Execution . . . all . . . Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8. This power provides a second source of authority, independent of the courts' inherent power, that supports the invocation of Rule 11 in this case.

Pursuant to its constitutional authority, Congress may create, supplement, and limit the rules of practice and procedure in the lower federal courts which it has created. *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 9-10 & n.6 (1941) (citing *Wayman* v. *Southard*, 23 U.S. (10 Wheat.) 1, 21 (1825)). Indeed, this Court specifically has acknowledged that "the constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in th[e] [lower federal] courts . . . ." *Hanna* v. *Plumer*, 380 U.S. 460, 472 (1965).

The Rules Enabling Act of 1934, 28 U.S.C. § 2071, *et seq.*, constitutes an exercise of this congressional power. See *Hanna*, 380 U.S. at 471; *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 15-16 (1941); *Mistretta* v. *United States*, 488 U.S. 361, 386-88 (1989). Under that Act, Congress delegated to the Supreme Court the authority to promulgate the Federal Rules of Civil Procedure, which, unless

disapproved by Congress, are binding on the lower courts.[18]

This Court has recognized that Congress's authority to regulate procedure is distinct from the inherent procedural authority (see *supra*, page 14) of the federal courts. Thus, the " 'administration of legal proceedings' " has been defined as an area " 'in which federal courts have traditionally exerted strong inherent power, completely aside from the powers Congress expressly conferred in the Rules.' " *Hanna*, 380 U.S. at 472-73 (quoting *Lumbermen's Mutual Casualty Co.* v. *Wright*, 322 F.2d 759, 764 (5th Cir. 1963)). The power that Congress has delegated in the Rules Enabling Act is nevertheless the superior power, and Congress can exercise it to regulate, limit, or supplement the lower federal courts' use of their inherent power, if it chooses to do so, because those "courts were created by act of Congress." *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510-11 (1874); see *Chambers*, 111 S. Ct. at 2134.[19] The power and obligation of a district court to impose sanctions under Rule 11 thus rests not only on the federal courts' inherent powers, but also on the congressional authority underlying the Rules Enabling Act.

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[18] Petitioner concedes that "Congress undoubtedly has a constitutional prerogative" to empower courts to order attorneys' fees "even in cases outside Article III," but argues that to do so Congress must expressly so provide in a statute. Pet. Br. 18 (referring to 28 U.S.C. §§ 1919, 1447(c)). The argument lacks merit because Rule 11 sanctions are authorized by statute. Under the Rules Enabling Act, Congress delegated to this Court power to promulgate rules of procedure for use in all cases, subject to congressional review before taking effect. 28 U.S.C. §§ 2072(a), 2074. The Rules thus have the approval of Congress as well as of this Court. See *Hanna* v. *Plumer*, 380 U.S. 460, 471 (1965); *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 15-16 (1944).

[19] As discussed in Part B(2), however, this Court has suggested that there may be limits on the degree to which Congress can constrict the inherent power of the federal courts. See *supra*, pages 18-20.

Finally, it is evident that nothing in the Constitution precludes Congress from granting the courts procedural power to act in circumstances outside of cases or controversies under Article III. Indeed, Congress has regularly granted the courts such power. For example, Congress has provided federal courts with authority to award costs and attorneys' fees against a party who improperly removes a case to federal court, even though a lack of Article III jurisdiction is intrinsic to the finding that removal was improper. See 28 U.S.C. § 1447(c); see also 28 U.S.C. § 1919 (authorizing award of costs against party who improperly brings complaint in federal court).[20] It is also well established that Congress may empower "Article III courts [to] perform a variety of functions not necessarily or directly connected to adversarial proceedings in a trial or appellate court." *Mistretta*, 488 U.S. at 389 n.16. Thus, "[f]ederal courts supervise grand juries and compel the testimony of witnesses before those juries, see *Brown* v. *United States*, 359 U.S. 41, 49 (1959), and participate in the issuance of search warrants, see Fed. Rule Crim. Proc. 41, and review wiretap applications, see 18 U.S.C. §§ 2516, 2518 (1982 ed. and Supp. IV)." *Id.*

All of these powers, entrusted by Congress to Article III courts, involve no exercise of Article III judicial power.[21] There is therefore no reason to assume, as peti-

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[20] See also *Mansfield, C. & L. M. Ry.* v. *Swan*, 111 U.S. 379, 386-87 (1884) (enforcing statute allowing recovery of costs from party who wrongly removes case to federal court); *Phoenix-Buttes Gold Mining Co.* v. *Winstead*, 226 F. 863 (N.D. Cal. 1914) (rejecting constitutional challenge to same statute).

[21] Congress also may delegate to the judicial branch numerous substantive and administrative responsibilities to be carried out in addition to the adjudication of cases under Article III. See, *e.g.*, *Mistretta* v. *United States*, 481 U.S. 361, 384-97 (1989) (upholding the constitutionality of Sentencing Guidelines promulgated by the Sentencing Commission, an independent body created by Congress and placed in the Judicial Branch, and stating that "Congress may

tioner suggests (Pet. Br. 28), that the Rules contain an "implicit premise" that they "are not necessary for disputes beyond the judicial power conferred by Article III." To the contrary, the plain language of Rule 11, Rule 1, and the Rules Enabling Act suggests that Rule 11 is to apply to *all* instances in which parties file harassing or abusive pleadings in district court. See *supra*, pages 10-12. The inclusive language of the Rules makes sense: Courts need rules of procedure for every proceeding, not just for those in which it is ultimately determined that they have subject matter jurisdiction. This case itself illustrates that Rule 11 is "necessary" to protect the integrity of the judicial process and to deter misconduct during proceedings that ultimately may be found to be outside the jurisdiction of the court.

The Rules thus constitute a plain grant of congressional authority to apply sanctions in cases such as this one. As a matter of principle, this Court does not overturn a congressional grant of authority to the judicial branch except for "the most compelling constitutional reasons." *Mistretta*, 488 U.S. at 384 (quoting *Bowsher* v. *Synar*, 478 U.S. 714, 736 (1988)). Moreover, the extension of the Rules' coverage without regard to the district court's underlying jurisdiction was approved not only by Congress when it passed the Rules Enabling Act, but also by this Court when it promulgated Rule 11 and by Congress when it allowed the Rules to take effect. *See* 28 U.S.C. § 2074 (Rule cannot take effect until at least seven months after its submission to Congress for

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delegate to the Judicial Branch nonadjudicatory functions that do not trench upon the prerogatives of another Branch and that are appropriate to the central mission of the Judiciary"); *Morrison* v. *Olson*, 487 U.S. 654 (1988) (Congress may vest power of appointing special prosecutor in judicial branch); 28 U.S.C. § 331 (creating the Judicial Conference of the United States); 28 U.S.C. § 332 (creating judicial councils of circuits with power to "make all necessary orders for the effective and expeditious administration of the business of the courts").

possible disapproval). Thus, petitioner can succeed on his constitutional argument "only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule[s] . . . [do not] transgress[] . . . constitutional restrictions." *Hanna* v. *Plumer*, 380 U.S. 460, 471 (1965). As this Court has recently observed, this is "a large hurdle to get over." *Business Guides, Inc.* v. *Chromatic Communications Enters., Inc.*, 111 S. Ct. 922, 933 (1991).

In this case, the hurdle cannot be surmounted. Petitioner's suggestions that the delegation of such authority by Congress (1) contravenes the limited authority of the judiciary embodied in separation of powers principles, (2) is inconsistent with this Court's rulings in civil contempt cases, and (3) constitutes an improper extension of the Rules to address substantive rights are all without merit.

1. The application of Rule 11 in cases that are later determined to arise outside the subject matter jurisdiction of the district court is fully consistent with the principles underlying the limited authority of the judiciary under Article III and the separation of powers. In *Mistretta*, 488 U.S. at 383, the Court explained that "[i]n cases specifically involving the Judicial Branch, we have expressed our vigilance against two dangers: first, that the Judicial Branch neither be assigned nor allowed 'tasks that are more appropriately accomplished by [other] branches,' *Morrison* v. *Olson*, [487 U.S. 654, 680-81 (1988)] and, second, that no provision of law 'impermissibly threatens the institutional integrity of the Judicial Branch.' *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 851 (1986)." Neither of these dangers is present in this case.

Whether the power to order sanctions against litigants who abuse the judicial process is viewed as one "allowed" to the Judicial Branch (under its inherent power) or "assigned" to it (by Congress via the Rules Enabling Act),

that power is one that federal courts are uniquely suited to exercise. The exercise of such power by the Judiciary does not constitute a misappropriation of power belonging to another branch, but the exercise of a power that "long has belonged to it." *Mistretta*, 488 U.S. at 396.

If there were any doubt whether Congress viewed the judiciary's exercise of this power to be improper absent express statutory authorization, it is dispelled by the Rules Enabling Act. As the Court explained in *Mistretta*, "Congress expressly has authorized this Court to establish rules for the conduct of its own business and to prescribe rules of procedure for lower federal courts." 488 U.S. at 388. Given the Court's repeated affirmance of Congress's power to delegate such rulemaking authority, the constitutionality of Rule 11 "is no longer an issue for dispute." *Id.* at 386.

Similarly, the application of Rule 11 to penalize misconduct during judicial proceedings later determined to be outside Article III does not encroach upon powers reserved to the Executive Branch. This Court recently held in *Young* v. *United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787 (1987), that a district court's inherent power to initiate contempt proceedings and to appoint a private attorney to prosecute the contempt does not encroach unduly on the power of the Executive Branch to enforce the law. The judicial power asserted here is far more modest than that at issue in *Young*. Yet the ultimate purpose of the power is the same—to preserve the institutional integrity of the Judicial Branch. The exercise of judicial authority to sanction litigants for misconduct in cases arising outside of the federal courts' subject matter jurisdiction therefore does not violate separation of powers principles.

2. Petitioner also argues that the decision below conflicts with cases in which this Court has held that civil contempt orders, which he terms "functionally equivalent" to sanctions under Rule 11, could not stand where

the court lacked jurisdiction to issue the underlying order that the contemnor violated. See Pet. Br. 20-21 & n.19, 31-32 (citing, *inter alia*, *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988); *United States* v. *United Mine Workers*, 330 U.S. 258 (1947)).[22] Petitioner's analogy between civil contempt and Rule 11 sanctions, however, is fundamentally flawed. In fact, a Rule 11 sanction is much more like a citation for criminal contempt than for civil contempt.

The fundamental difference between civil and criminal contempt is that civil contempt is intended to coerce the contemnor to submit to the authority of the court, whereas criminal contempt is intended to punish the contemnor for disobedience to a court order. See *United States* v. *United Mine Workers*, 330 U.S. 258, 298-99, 303-04 (1947); *id.* at 330-32 (Black, J., concurring); see also *Bessette* v. *W.B. Conkey Co.*, 194 U.S. 324, 329-30 (1904); *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S.

[22] Petitioner also relies for general support on this Court's *dicta* in *The Mayor* v. *Cooper*, 73 U.S. (6 Wall.) 247 (1868), that "[i]f there were no jurisdiction, there was no power to do anything but to strike the case from the docket." *Id.* at 250; *see* Pet. Br. 12, 20 & n.18. This dictum cannot be read, as petitioner suggests, to refer to a lack of constitutional power to punish litigation misconduct. First, such a reading is flatly inconsistent with this Court's holding in *Cooter & Gell* v. *Hartmarx Corp.*, 110 S. Ct. 2447, 2454-57 (1990), that a district court has power to order Rule 11 sanctions following voluntary dismissal of a case. Second, the decision in *Cooper* makes plain that the "power" to which the Court referred was denied not by the Constitution, but rather by the "general rule" of courts in the nineteenth century not to order payment of the prevailing party's costs in cases dismissed for lack of jurisdiction. See *Mansfield*, 111 U.S. at 387. That the rule was not a constitutional one is further shown by Congress's decision to alter it by statute and this Court's decision to enforce the altering statute. *Id.* Third, *Cooper* and its progeny involved the general power to shift costs based on the outcome of a case, which this Court has distinguished from the more fundamental power to shift fees as a sanction for misconduct. *E.g.*, *Roadway Express*, 447 U.S. at 765-66.

418, 441-43, 450-52 (1911). Rule 11 is analogous to criminal contempt because, like criminal contempt, its underlying purpose is "punitive." *Chambers*, 111 S. Ct. at 2137; see *supra*, page 21. Indeed, a Rule 11 sanction cannot serve a coercive purpose where, as is almost always the case, it is imposed after completion of the conduct that triggered it.[23]

Furthermore, while a civil contempt order is intended to coerce compliance with a court order, in practice it often serves as a legitimate procedural method for enabling a party that fears irreparable injury if it complies with the court's order to obtain appellate review. See, *e.g.*, *United States Catholic Conference* v. *Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988). Should the party establish on appeal that the district court lacks jurisdiction over the subject matter, the party is thereby released from any obligation to comply with the challenged order. *Id.*; see *Gompers*, 221 U.S. 418. Conversely, criminal contempt, because of its inherently punitive nature, must be enforced in order to vindicate the authority of the court regardless of the existence of subject matter jurisdiction, *United Mine Workers*, 330 U.S. at 290, 295, or the existence of a live controversy, *Gompers*, 221 U.S. at 450-52.

Thus, recognition that district courts may enforce Rule 11 even in cases where they lack subject matter jurisdiction is not inconsistent with the Court's ruling regarding civil contempt in *United States Catholic Conference*. In that case, Catholic Conference, a third party to the litigation, refused to obey a discovery request that it believed would cause it irreparable harm, was held in civil contempt, and exercised its right to immediate appeal of the civil contempt order, which was stayed pending appeal. The basis of the appeal was a challenge to the district

[23] *See* Adv. Comm. Notes on Fed.R.Civ.P. 11, 1983 Amendment (sanctions for frivolous pleadings "normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter").

court's subject matter jurisdiction, which the court of appeals refused to entertain. This Court reversed, holding that third parties who challenge civil contempt orders on appeal may raise the lack of subject matter jurisdiction as a defense.

In so holding, the Court noted that "Federal Rule of Civil Procedure 45 grants a District Court the power to issue subpoenas as to witnesses and documents, but the subpoena power of a court cannot be more extensive than its jurisdiction." *Id.* at 76. The Court further reasoned that "if a District Court does not have subject-matter jurisdiction over the underlying action, and the process was not issued in aid of determining that jurisdiction, then the process is void and an order of civil contempt based on refusal to honor it must be reversed." *Id.* This language, taken out of context, could suggest that the exercise of judicial power under the Rules always is void unless exercised in connection with a case over which the court has subject matter jurisdiction or in which it is determining jurisdiction.

This Court plainly did not mean its decision to be read that broadly. First, the Court took pains to indicate the "limitations of the rule" that it had announced. *Id.* at 78. The Court explained that nothing in the opinion should be thought to upset the settled and "sound" distinction between criminal and civil contempt which allows the former to be enforced even absent subject matter jurisdiction. *Id.* Because sanctions under Rule 11 are akin to criminal rather than civil contempt, they also should be enforceable regardless of subject matter jurisdiction.[24]

[24] Here, for example, petitioner was sanctioned not for challenging the court's jurisdiction, but for filing abusive and dishonest pleadings. His disregard of the court's procedural orders constituted an independent affront to the dignity of the court akin in nature if not degree to contumacious conduct punishable by criminal contempt. By contrast, Catholic Conference was held in civil contempt to coerce compliance with a discovery request; its challenge to juris-

Second, the language quoted above sweeps more broadly even in the area of civil contempt than the Court could have intended. Read literally, for example, the language could preclude a district court from issuing a subpoena relevant to a non-Article III proceeding such as a hearing on whether an attorney should be disbarred, or a grand jury proceeding. But the Court in *Catholic Conference* took care to discuss at length and distinguish *Blair* v. *United States*, 250 U.S. 273 (1919), in which the Court upheld the issuance of subpoenas by a district court in aid of a grand jury investigation. 487 U.S. at 77-78. Thus, although *Catholic Conference* confirms the long-standing rule that an appellate finding of lack of subject matter jurisdiction voids the entry of a civil contempt order, it does not limit the power of district courts to vindicate their authority through punitive sanctions orders under Rule 11 or the criminal contempt power.

3. Finally, contrary to petitioner's suggestion (Pet. Br. 18-19 & n.15), the application of Rule 11 in the circumstances here does not constitute an impermissible adjudication of the substantive rights of the parties. Rule 82 of the Federal Rules of Civil Procedure states that the rules "shall not be construed to extend or limit the jurisdiction of the United States district courts . . . ." Fed. R. Civ. P. 82; see 28 U.S.C. § 2072(b) (rules "shall not abridge, enlarge or modify any substantive right"). The district court's application of Rule 11 does not adjudicate *any* substantive question presented in the complaint or answer, but instead addresses the entirely independent

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diction in the course of its appeal presented no threat to the court's dignity, but was merely a procedurally correct method of obtaining interlocutory review. In this regard, petitioner had available the option of allowing a judgment to be entered against him dismissing his claim and then appealing that decision to the court of appeals. In that way he would have obtained appellate review of the jurisdictional issue immediately. Having refused to take this procedurally correct method for resolving quickly and finally the jurisdictional issue, he was not free to protest the jurisdictional ruling through abuse tactics while the case remained pending in the district court. *Cf.* Pet. 26.

and collateral issue of the proper judicial response to a party's litigation misconduct.

The touchstone of a procedural rule is that "it does not operate to abridge, enlarge or modify the rules of decision by which [the] court will adjudicate [litigants'] rights." *Hanna* v. *Plumer*, 380 U.S. 460, 465 (1965) (quoting *Mississippi Publishing Corp.* v. *Murphree*, 326 U.S. 438, 445-46 (1946)); see also *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 9-14 (1941). In practice, a Rule may "incidentally affect litigants' substantive rights," *Burlington N. R.R.* v. *Woods*, 480 U.S. 1, 5 (1987), yet still be valid so long as its primary purpose is to control conduct in the course of litigation. *Business Guides, Inc.* v. *Chromatic Communication Enters., Inc.*, 111 S. Ct. 922, 934 (1991). *Cf. Insurance Corp. of Ireland* v. *Compagnie Des Bauxites de Guinee*, 456 U.S. 694, 705 (1982) ("not all rules that establish legal consequences to a party's own behavior are 'mere assertions' of power") (quoting *Chicago Life Ins. Co.* v. *Cherry*, 244 U.S. 25, 29 (1917)).

This Court recently held that Rule 11 in particular is a valid procedural rule because it does not control the adjudicatory function, but is merely collateral to the court's adjudicatory tasks. In *Cooter & Gell* v. *Hartmarx Corp.*, this Court held that voluntary dismissal of a complaint under Fed. R. Civ. P. 41(a)(1) does not bar a district court from subsequently imposing sanctions on the plaintiff under Rule 11 for conduct prior to the dismissal. 110 S. Ct. 2447, 2454-57 (1990). Clearly, dismissal under Rule 41(a)(1) deprives the court of all jurisdiction to address the substantive issues in a case. If the court can nonetheless act on collateral matters such as Rule 11 sanctions for abusive conduct, then those sanctions must not implicate the "case or controversy" provisions of the Constitution. *Id.* at 2456 ("Like the imposition of costs, attorney's fees, and contempt sanctions, the imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the

determination of a collateral issue . . ."); see also *Business Guides*, 111 S. Ct. at 934 (distinguishing sanctions under Rule 11 from tort action for malicious prosecution). Because Rule 11 sanctions do not resolve cases or controversies, their imposition may be governed by procedural rule, and they are not restricted by limitations on federal jurisdiction. Here, it is plain that the Rule 11 sanctions ordered by the district court were entirely collateral to the subject matter of petitioner's claim, and thus had, at most, an "incidental" effect on any of petitioner's substantive rights.

In sum, quite apart from the inherent powers of the federal courts, Congress constitutionally may grant and has granted federal courts the power, through the Rules Enabling Act and Rule 11, to sanction parties whose conduct unreasonably interferes with the judicial process even in matters ultimately found not to arise within the subject matter jurisdiction of the courts.

D. The Discretion To Impose Sanctions Under Rule 11 Of The Federal Rules Of Civil Procedure In Circumstances Where The District Court Is Later Determined To Be Without Subject Matter Jurisdiction Is Necessary To Vindicate The Authority And Dignity Of The Court.

The foregoing establishes that nothing in the Constitution or this Court's precedents requires the adoption of the limits on judicial power that petitioner has proposed. Nor would it be desirable for this Court, in the exercise of its supervisory authority, to limit the discretion of the district courts in the manner petitioner has suggested. See *supra*, note 10. Far from promoting any meaningful constitutional values, petitioner's victory would do nothing more than "secure[] the right to file baseless papers." *Cooter & Gell*, 110 S. Ct. at 2456.

Petitioner's theory, which limits "a court's inherent power to police itself" (*Chambers*, 111 S. Ct. at 2133)

to cases over which it either is in the process of determining jurisdiction or has correctly asserted jurisdiction, does not promote values of respect for federalism, separation of powers, or the observance of appropriate limits on the power of the judicial branch. Although observance of the limits on the federal courts' subject matter jurisdiction to decide cases and controversies is critical to these important constitutional values, the entirely collateral question of whether to sanction a party for subjecting a federal court to "irresponsible" and "intentionally harassing" behavior (Pet. App. A7) is not. Although the States properly may object to federal courts' aggrandizement of substantive jurisdiction, they are at best indifferent to those courts' imposition of sanctions on litigants who engage in litigation misconduct. Moreover, the imposition of such sanctions does not intrude on the prerogatives reserved to the other branches of the federal government. See *supra*, pages 31-32.

Depriving the federal courts of the power to impose sanctions, however, would constitute a grave impediment to the administration of justice in the federal courts. Rule 11 is "aimed at curbing abuses of the judicial system," *Cooter & Gell*, 110 S. Ct. at 2457, and that value is just as important when a district court is incorrect in its determination that it has jurisdiction as when it is correct. Petitioner himself has cited numerous cases in which the district courts have imposed Rule 11 sanctions in cases which were later determined to arise outside the subject matter jurisdiction of the Court. Pet. Br. 30-31 & n.31. The scope of the courts' jurisdiction under Article III is not always self-evident. *E.g.*, Pet. App. A13-A34. Indeed, this Court's decisions addressing circuit conflicts on the scope of federal jurisdiction illustrates the complexity of these issues.[25] Thus, district courts will not

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[25] *E.g.*, *Carden* v. *Arkoma Assoc.*, 494 U.S. 185 (1990) (resolving circuit split on scope of diversity jurisdiction); *K Mart Corp.* v. *Cartier, Inc.*, 485 U.S. 176 (1988) (federal question jurisdiction).

infrequently preside, entirely in good faith and in accord with prevailing circuit law, in matters over which it is later found that they lack subject matter jurisdiction.

A rule that deprived the courts under such circumstances of the power to enforce sanctions under Rule 11, as petitioner would do (see Pet. Br. 31), would have serious consequences. It would overrule the settled practice in the lower courts that such sanctions are permissible. It would allow brazen and irresponsible attorneys and litigants to escape unpunished, deprive the district courts of an essential tool for curbing abuses in cases on their dockets, reduce the deterrent effect that Rule 11 is intended to have, and allow litigants to "gamble on the possibility of escaping responsibility for their actions if the court's power to act on the merits eventually is foreclosed." Pet. Br. 23. In addition, the rule advocated by petitioner would have a negative impact more generally on the dockets of the district courts. "Baseless filing puts the machinery of justice in motion, burdening courts and individuals alike with needless expense and delay." *Cooter & Gell*, 110 S. Ct. at 2457. The waste of judicial resources occasioned by petitioner's conduct (see Pet. App. 35A-36A) affects every citizen who has a legitimate claim on those limited resources.

In sum, limiting the authority of the federal courts to sanction parties would not serve the constitutional values of policing the separation of powers or promoting federalism. Petitioner's rule amounts to nothing more than an unwarranted reprieve for those who abuse the judicial process, and should be rejected.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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